



**Advancing Land-based
Investment Governance**



WHY SHOULD LAWYERS WORRY ABOUT INVESTMENTS IN AGRICULTURAL LAND?

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Background

- In the past decade some investors achieved significant returns on land-based investments in agriculture and forestry in developing countries.
- Some benefited the countries and communities, too.
- Not all land-based investments are equally beneficial, and those that harm communities, workers and the environment create great risk to the success of the investment.
- Evidence that investors who fail to use responsible investment practices incur much higher costs and thus a reduced likelihood of receiving a reasonable risk-based return on the investment.
- Here we will discuss how lawyers can help clients manage these risks.



Investing Irresponsibly Is Risky

- Some numbers:
 - A study of 137 investments in Africa and Asia found that mitigation expenses averaged 2% of overall project expenditure compared to potential financial losses of 24-37%, an estimated range of losses of US\$25-40 million (ODI 2021).
 - A recent review of 90 land-based investments in Africa revealed losses ranging from US\$10 million to US\$100 million related to failure to adequately address risks related to land tenure (ODI & TMP Systems 2019).
- Investing responsibly can help investors to manage the substantial financial, legal, operational and reputational risks inherent in investing in land-based assets in many developing countries.
- Investment practices that lead to delays, conflicts, violate the law or anger consumers can be very costly and threaten the financial success of the project.
- Shareholders, financiers and customers increasingly demand this.



Investing Responsibly Can Be Expensive, But Worth It

- Investing in land in developing countries can be challenging.
 - Land governance is often weak
 - Capacity within government and communities is low
- This means that investing responsibly carries significant costs.
 - Essential practices such as mapping stakeholders, consulting effectively with local communities, conducting inclusive environmental and social impact assessments can be costly.
 - But the costs of getting it wrong can be even higher. Communities displaced and impoverished by an investment are likely to find a way to undermine it through protests or other tactics.



Basic Principles of a Responsible Land-Based Investment

- Respect legitimate tenure rights
- Effective consultation and participation; FPIC
- Collaborative business models where possible
- No infringement of human rights or harm to environment, food security or livelihoods
- Equitable benefit-sharing
- Empower women and youth
- Equitable contracts; grievance mechanisms
- Impact assessments and monitoring



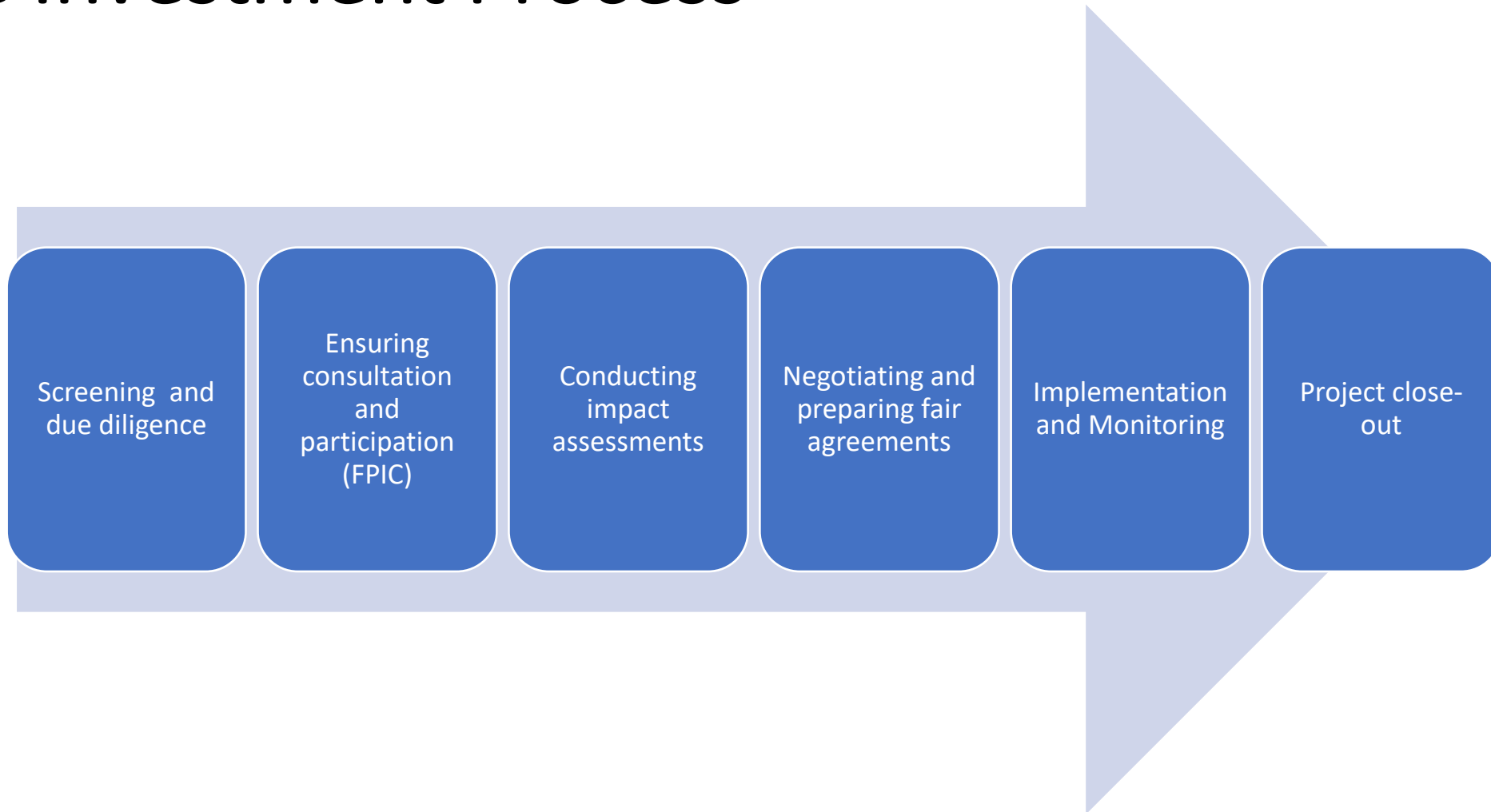
What Can Lawyers Do? Policies and Practices

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- Help clients develop policies and practices embodying these principles.
- Should lay out the business's overall commitment to applying international instruments (VGGT, CFS-RAI, UNGP) and other relevant international standards and best practices to each land-based investment
- **Even when doing so is not required by national law.**



What Can Lawyers Do? Guide Clients through the Investment Process





Useful Resources

- FAO 2016. Responsible Governance of Tenure: A Technical Guide for Investors (<https://www.fao.org/3/i5147e/i5147e.pdf>).
- FAO 2016. Responsible Governance of Tenure and the Law: A Guide for Lawyers and Other Legal Service Providers (<https://www.fao.org/3/i5449e/i5449e.pdf>).
- FAO 2014. Respecting Free, Prior and Informed Consent (<https://www.fao.org/publications/card/en/c/e5e9c08e-ff02-5509-8929-6f6537883f7b/>).
- Interlaken Group 2017. Land Legacy Issues: Guidance on Corporate Responsibility. Washington, DC (https://uploads-ssl.webflow.com/5d819417269ec7897f93e67a/5dcb5578c74abf5dc2f80f18_Interlaken_Group_Land_Legacy_Guidance.pdf).
- Landesa 2021. Business Enterprise Guidebook. Seattle, Washington (https://ripl.landesa.org/model_guidebooks/1).
- Munden Project 2012. The Financial Risks of Insecure Tenure: An Investment View. Washington, DC, Rights and Resources Initiative. http://www.rightsandresources.org/documents/files/doc_5715.pdf
- New Alliance for Food Security and Nutrition, 2015. “Analytical Framework for Land-Based Investments in African Agriculture.” https://www.growafrica.com/sites/default/files/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf.



Useful Resources

- OECD/FAO 2016. OECD/FAO Guidance for Agricultural Supply Chains (https://www.oecd-ilibrary.org/agriculture-and-food/oecd-fao-guidance-for-responsible-agricultural-supply-chains_9789264251052-en).
- ODI 2021. The Financial Costs of Mitigating Social Risks: Costs and Effectiveness of Risk Mitigation Strategies for Emerging Market Investors. Overseas Development Institute. London (<https://odi.org/en/publications/the-financial-costs-of-mitigating-social-risks-costs-and-effectiveness-of-risk-mitigation-strategies-for-emerging-market-investors/>).
- ODI and TMP Systems 2019. Assessing the Costs of Tenure Risks to Agribusinesses (http://www.landgovernance.org/assets/QTR_Report-Assessing-the-costs-DIGITAL_1.pdf).
- UNIDROIT/IFAD 2021. Legal Guide on Agricultural Land Investment Contracts (<https://www.unidroit.org/wp-content/uploads/2021/09/ALICGuidewebsite.pdf>)
- USAID 2015. USAID Operational Guidelines for Responsible Land-Based Investment. Washington, DC. <https://www.land-links.org/tool-resource/operational-guidelines-for-responsible-land-based-investment/>



The Bottom Line

- Investment projects that undermine the security of local people by displacing them or depriving them of livelihoods are unlikely to be profitable over the long term.
- They also create enormous reputational risk throughout the value chain.
- Investing responsibly can be costly but is essential to effective risk management and long-term financial success.
- Lawyers can play a key role in helping clients succeed.



ALIGN: Advancing Land-based Investment Governance

ALIGN supports governments, civil society, local communities and other relevant actors in strengthening the governance of land-based investments. The project is implemented by a consortium led by the International Institute for Environment and Development (IIED), the Columbia Center on Sustainable Investment (CCSI) and Namati, and is funded with UK aid from the UK government.

This material has been produced as part of ALIGN by Darryl Vhyugen, however the views expressed do not necessarily reflect the official views or policies of ALIGN partners or the UK Government.

THANK YOU

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